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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-419

AUTOMOTIVE CHAUFFEURS, PARTS AND GARAGE EMPLOYEES, LOCAL UNION 926, ET AL.,
Petitioners,
v.
NAPA PITTSBURGH, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Respondent accepts Petitioners' reference to the reports of the case below, jurisdictional statement, and citation of statutes involved.

QUESTION PRESENTED

Where a collective bargaining agreement provides for a mandatory grievance procedure culminating in binding arbitration during which there shall be no cessation of work and further provides that it is not a violation of the agreement to honor "primary picket lines", does a district court have authority, pursuant to Section 301 of the Labor-Management Relations Act of 1947 (LMRA), to issue an injunction and order arbitration of a bona fide dispute between an employer and a labor organization over the status of a picket line established at the employer's facility by a stranger labor organization?

STATEMENT OF CASE

NAPA Pittsburgh, Inc. ("NAPA") is a Pennsylvania corporation with its executive offices and principal place of business at 6550 Hamilton Avenue, Pittsburgh, Pennsylvania. The Automotive Chauffeurs, Parts and Garage Employees, Local 926, an affiiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 926") and NAPA entered into a three year collective bargaining agreement effective June 1, 1971, whereby "any and all grievances, complaints or disputes arising between the Employer and the Union or any employee represented by the Union and covered by the Agreement" are ultimately determined by binding arbitration without a cessation of work. The collective bargaining agreement further provides in Article XIII that:

> "It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a *primary labor dispute* or refuses to go through or work behind any picket lines, including the *primary picket lines* of Unions party to this Agreement and including *primary picket lines* at the Employer's place or places of business." [emphasis supplied]

On August 29, 1973, NAPA Altoona, Inc. ("Altoona"), a separate corporation with its place of business located approximately 120 miles from Pittsburgh, Pennsylvania entered into an agreement with Teamsters, Chauffeurs and Helpers Local 110, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 110") to conduct a representation election of October 5, 1973, among the warehousemen and truck drivers employed

by Altoona at its Duncansville, Pennsylvania, facility. This agreement was approved on August 30, 1973, by the Regional Director of Region 6 of the National Labor Relations Board. On the same day this agreement was executed, Local 110 notified Local 926, through its Secretary-Treasurer, of the intent to strike Altoona and to send pickets to the Hamilton Avenue place of business of NAPA. On September 5, 1973, at approximately 7:30 a.m., members and adherents of Local 110 commenced picketing NAPA at 6550 Hamilton Avenue, Pittsburgh, Pennsylvania. From that date, members of Local 926 refused to cross the picket line and to go to work at the Hamilton Avenue facility with the approval of Local 926 despite the request of NAPA for Local 926 to cease honoring the secondary picket line established by Local 110. Local 926 advised its members that it was not a breach of the collective bargaining agreement to refuse to cross the Local 110 picket line as the picket line was primary in nature.

Because of the dispute with Local 926 over the status of the picket line established by Local 110 and the ensuing concerted work stoppage by Local 926 and its members because of the said dispute, NAPA instituted the instant case pursuant to Section 301 of the Labor Management Relations Act, 1947[1] to enjoin the said work stoppage in violation of the collective bargaining agreement and to require arbitration of the dispute pursuant to the applicable provisions of the collective bargaining agreement.

The United States District Court for the Western District of Pennsylvania issued an injunction and or-

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1. 61 Stat. 157, 29 U.S.C. §185 (a).

dered arbitration upon finding that the grievance procedure in the collective bargaining agreement was mandatory, the dispute between NAPA and Local 926 was covered by the collective bargaining agreement and arbitrable, and NAPA was suffering irreparable harm. In a six to three decision, the United States Court of Appeals for the Third Circuit affirmed the judgment of the district court with all judges agreeing that the dispute between NAPA and Local 926 was arbitrable.

REASONS WHY WRIT SHOULD NOT BE GRANTED

I. The Decision Below Does Not Conflict With The Holding Of This Court In The Boys Markets v. Retail Clerks Union, Local 770, 398 U.S. 235.

The United States Court of Appeals for the Third Circuit in affirming the Order enjoining the work stoppage and mandating arbitration of the dispute correctly applied the principles of the decision of this Court as enunciated in *Boys Markets, Inc. v. Retail Clerks, Local 770,* 398 U.S. 235 (1970). *Boys Markets* holds in essence that when the parties to a collective bargaining agreement have provided a peaceful, voluntary, and binding method of settling disputes arising during the life of the agreement this method must be utilized and the union may not attempt to defeat the jurisdiction of an arbitrator by the application of economic force in the form of a strike.[2] The statement of the issue by Mr. Jus-

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2. "On the other hand, the central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations is hardly retarded—if anything, this goal is advanced—by a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration. We conclude, therefore, that the

tice Brennan in *Boys Markets* clearly controls the present dispute:

> "In this case we re-examine the holding of *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962), that the anti-junction provisions of the Norris-LaGuardia Act preclude a federal district court from enjoining a strike in breach of a no-strike obligation under a collective-bargaining agreement, even though that agreement contains provisions, enforceable under §301 (a) of the Labor Management Relations Act, 1947, for binding arbitration of the grievance dispute *concerning which the strike was called."* 398 U.S. at 237-238 [emphasis supplied]

The strike at NAPA concerned the status of the picket line: Was it primary or was it secondary? It is not argued by Local 926 that there would have been no strike had it agreed with the characterization by NAPA of Local 110's picket line as secondary. The dispute between the parties was the status of the picket line, and Local 926 decided to enforce its interpretation by the use of economic force in place of arbitration.

Boys Markets and the decision of this Court in *Gateway Coal Company v. United Mine Workers*[3] are based on an exception to Section 4 of the Norris-LaGuardia Act[4] requiring the utilization of the arbitration procedure when the contract is susceptible of requiring bind-

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unavailability of equitable relief in the arbitration context presents a serious impediment to the congressional policy favoring the voluntary establishment of a mechanism for the peaceful resolution of labor disputes . . ." 398 U.S. at 252-253.

3. 414 U.S. 368 (1974).

4. 47 Stat. 70, 29 U.S.C. §104.

ing arbitration.[5] Local 926 and NAPA provided a method of settling their disputes by such arbitration and specifically provided that Local 926 could strike only in the presence of primary picket lines. If Local 926 had not desired arbitration over bona fide disputes arising over the status of picket lines, then it could have assured such a result by the very simple expedient of having the contract provide that disputes over the status of picket lines are not subject to the arbitration procedure.

To permit Local 926 to enforce its characterization of the picket line by economic pressure while arbitration is proceeding, would leave NAPA no course of action to protect itself other than a subsequent action for damages which would merely exasperate the collective bargaining relationship.[6]

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5. "Although the Court of Appeals did not state that § (e) was an express exception to the arbitration clause, it evidently believed that the section created an ambiguity in the agreement which had to be resolved against arbitrability. However, as the Court stated in United Steelworkers v. Warrior & Gulf Navigation Co., *supra*, '[d]oubts should be resolved in favor of coverage.' 363 U.S., 582, 80 S. Ct., at 1353. Thus, '[i]n the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad.' *Id.*, at 585, 80 S.Ct., at 1354. Since § (e) clearly does not constitute an express exception to the arbitration clause, it follows that the safety dispute in the instant case must be deemed to fall within the broad arbitration clause." 414 U.S. at 380 n. 10.

6. "While it is of course true, as respondent contends, that other avenues of redress, such as an action for damages, would remain open to an aggrieved employer, an award of damages after a dispute has been

II. The Decision Below Is Not In Conflict With Any Decision Of Another Court Of Appeals.

Local 926 in seeking a Writ of Certiorari to the United States Court of Appeals for the Third Circuit alleges that the decision in this case is in direct conflict with the decision of the United States Court of Appeals for the Fifth Circuit in *Amstar Corporation v. Amalgamated Meat Cutters,* 468 F. 2d. 1372 (1972). There is no such conflict. *Amstar* holds that arbitration may not be ordered over the issue of whether or not the honoring of picket lines is arbitrable under a broadly drawn no-strike provision when the collective bargaining agreement is silent as to the rights and obligations of the parties with respect to the honoring of picket lines. This is clearly not the fact in the present case. NAPA and Local 926 specifically delineated their rights and obligations concerning the honoring of picket lines in their collective bargaining agreement. Unfortunately, when a dispute arose over the issue of the status of a picket line, Local 926 attempted to circumvent the method the parties had chosen to settle the dispute. The question in *Amstar* was whether or not a United States District Court may enjoin a work stoppage when the work stoppage itself is the cause of the grievance. In the case presently before this Court, the grievance is not the strike itself, but whether or not the conditions precedent to a lawful strike have been met.

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settled is no substitute for an immediate halt to an illegal strike. Furthermore, an action for damages prosecuted during or after a labor dispute would only tend to aggravate industrial strife and delay an early resolution of the difficulties between employer and union." 398 U. S. at 248.

Reasons Why Writ Should Not Be Granted.

There may be a conflict between the decisions of the United States Court of Appeals for the Fifth Circuit in *Amstar* and the decision of the United States Court of Appeals for the Fourth Circuit in *Monongahela Power Company v. Local 2332, IBEW,* 484 F.2d 1409 (1973), as stated by Local 926, but the conflict between the Circuits in those decisions is not involved in this case. On the contrary, the decision of the Court of Appeals for the Third Circuit in the instant case is in accord with the decisions of the Court of Appeals for the Fourth Circuit in the case of *Pilot Freight Carriers, Inc. v. Local 391, Teamsters*[7] and in the case of *Local 1426, Longshoremen v. Wilmington Shipping Co.,*[8] holding that disputes over the satisfaction of conditions precedent to the right to conduct a concerted work stoppage are proper subjects for a District Court to issue an injunction and order arbitration pursuant to Section 301 of the LMRA.

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7. 497 F.2d 311 (4th Cir. 1974), *cert. denied,* ..... U.S. ....., 43 U.S.L.W. 3199 (U.S. Oct. 15, 1974).

8. ..... F.2d ....., 86 LRRM 2846 (4th Cir. 1974), *petition for cert. filed,* 43 U.S.L.W. 3148 (U.S. Sept. 17, 1974) (No. 288).

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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